

IN THE MATTER OF	:	BEFORE THE
CROSSROADS ROCK, LLC	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 08-001C

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DECISION AND ORDER

On April 7, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Crossroads Rock, LLC for a conditional use to construct a gasoline service station on the same site as a proposed convenience store, car wash, and restaurant in an M-2 (Manufacturing: Heavy) Zoning District pursuant to Section 131.N.25 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Mr. Sang Oh, Esquire, represented the Petitioners. Bradd Caplan, Brian Cleary, and Mickey Cornelius testified in favor of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The subject property is located in the 1st Election District in the northwest quadrant of the intersection of Montevideo Road and Dorsey Run Road. It is referenced as Tax Map 43, Grid 16, Parcel 586, 2, and is also known as 7525 Montevideo Road (the "Property"). The Property is

zoned M-2 (Manufacturing: Heavy).

2. The 3.008-acre Property is generally triangular shaped with about 265 feet of frontage on Montevideo Road and about 810 of frontage on Dorsey Run Road. The existing structure on the Property will be removed for the proposed development. A stream, wetland, and associated buffers are situated in the northwest area of the Property behind the location of proposed gasoline service station/convenience building. The Conditional Use Plan depicts this building encroaching into a stream buffer.

3. Vicinal properties. Vicinal properties are also zoned M-2. Parcel 96 adjoining the Property to the northwest is improved with a medium size building. Across Dorsey Run Road at the intersection's northeastern quadrant are Parcels 463 and 443, which are improved with residential structures in commercial use, apparently. To the north of Parcel 463 is Parcel 443, which is improved with a large landscaping operation. Parcel 626, across Montevideo Road in the intersection's southwest quadrant, is improved with a large manufacturing building (Tate Access Floors). Beyond this parcel is Parcel 572 A, which is improved with another large manufacturing building (Building A of Baltimore Air Coil, Dorsey Run Industrial Center). Across Dorsey Run Road, at the intersection's southeast quadrant, Parcel 572 B is improved with several large manufacturing/office buildings in the Howard Business Park.

4. Roads. Montevideo Road has two travel lanes. The posted speed limit is 30 MPH. Dorsey Run Road along the Property's frontage and to its end just past the landscaping operation is an open section, deteriorated paved and gravel road. Under Capital Project J-4148 B, Dorsey Run Road would be extended to the northeast. The Capital Plan project for the Dorsey Run Road Extension depicts a proposed 60-foot right of way ("ROW"). There is no current posted speed limit for this section of Dorsey Run Road. The paved portion of Dorsey Run Road southwest of

its intersection with Montevideo Road has a posted speed limit of 35 miles per hour. Visibility from the intersection is poor in both directions because the Property is located on the high ground of Montevideo Road's vertical curvature. According to the Howard County Traffic Count Database, traffic volume on Montevideo Road south of US 1 was 4,451 ADT (average daily trips) as of April 2000. This database reports the traffic volume on Dorsey Run Road north of Guilford Road as 5,198 ADT as of March 2006.

5. The Property is served by public water and sewer.

6. The 2000 General Plan Policies Map 2000-2020 designates the Property as "Employment Area Redevelopment Corridor" The 2000 General Plan Transportation Map 2000-2020 depicts Montevideo Road as Major Collector and Dorsey Run Road as a Major Collector between MD 32 and MD 100.

7. The Petitioner proposes to construct a gasoline service station on the Property, pursuant to Section 131.N.25, together with a 3,939-square foot convenience store, car wash and restaurant on the Property. The combination of uses is permitted subject to the criteria in Section 131.N.25.i, as discussed below. The service station operation would dispense gasoline and pressurized air to cars and trucks. The restaurant would be either carry-out or "sit-in." No hours of operation or numbers of employees are stated in the petition. The 6-pump fuel pump canopy shown on the Conditional Use Plan is situated about 77 feet east of the Montevideo Road ROW in the southeast portion of the Property. The gasoline service station/convenience store building would be situated about 60 feet east of this canopy. The car wash and restaurant would be situated in the eastern section of the Property. Two dumpster pads are depicted on the Plan, one to the rear of the parking lot behind the restaurant, and a second north of the car wash along the

property line. The Plan depicts the service station/convenience store building as partially encroaching on the stream bank buffer.

Two means of access are shown on the Conditional Use Plan. Access from Montevideo Road would be gained via a curb cut situated about 20 feet from the Property's northwest corner, and from Dorsey Run Road by a curb cut situated about 360 feet east of the intersection with Montevideo Road.

8. Bradd Caplan, the vice-president of commercial development for H & H Rock Companies, one of the Property owners, testified that the proposed gasoline service station would be the first in the area and that there would be 6-8 multi-product dispensers under the canopy. No car repairs would occur. He stated that he could not provide specific numbers for employees or hours of operation but that no impact would occur given the Property's location. The dumpsters would be screened. He testified that as the owner of the Property, H & H Rock would be responsible, together with any lessees, for the maintenance and orderly condition of the gasoline service station. He also stated that all vending machines or sales of propane would be screened or enclosed, if required by the Hearing Authority.

9. Brian Cleary testified that the stream buffer contained no environmental features and that the Petitioner will be requesting a waiver to permit the store to encroach into the buffer. In the event that the County would not permit the encroachment, the store would be relocated or reduced in size to meet the setback. Access would be gained from either Montevideo Road or Dorsey Run Road. The size of the convenience store would meet the 3,500-square foot maximum size requirement because the gasoline station would use a portion of the building. He also stated that it was the first gasoline service station along Dorsey Run Road. Referring to Petitioner's Exhibit 2, which depicts turning movements from Montevideo and Dorsey Run

Roads, he testified that the tankers could enter the site through either road, make deliveries to the underground storage tank and pass through the site with no problem once the road improvements were made.

10. Mickey Cornelius, a traffic engineer, testified that Montevideo and Dorsey Run Roads are capital improvement projects. Referring to Petitioner's Exhibit 3, a road profile depicting improvements to Montevideo Road, he testified that once Montevideo Road was redesigned and leveled out, sight distance at the Montevideo Road access would be adequate. If the project were to proceed before the road improvements were completed, a temporary access would have to be constructed to meet sight distance criteria at Montevideo Road.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

1. General Plan. Because the proposed gasoline service station will be located in an industrial/commercial area, the proposed use is consistent with the General Plan's Chapter 5, Community Conservation and Enhancement. It is also consistent with Policies 5.10 and 5.11, which address, respectively, improving the design of commercial areas and making existing commercial centers and strip commercial-industrial corridors more efficient and attractive. The Technical Staff Report ("TSR") concludes the proposed Dorsey Run Road extension will improve the commercial area and the proposed use will harmonize with existing commercial-industrial uses. Accordingly, the nature and intensity of operation, the size of the Property in relation to the use, and the location of the Property with respect to access streets, are such that the uses will be in harmony with the land uses and policies indicated in the General Plan for the district, in accordance with Section 131.B.1.a.

2. The petition proposes a conditional use in combination with permitted uses, a car wash, convenience store, and restaurant, which will be either carry-out or sit-in. Except for the wetland buffer, the proposed use complies with all setback requirements. The Property's acreage will support the proposed combination of uses and the Conditional Use Plan depicts more parking spaces than are required. The pump islands will be physically separated from adjacent properties and uses and buffered from vicinal properties by perimeter landscaping. Consequently, the proposed use is an appropriate intensification of use and scale, given the adequacy of the existing and proposed buffers and setbacks, in accordance with Section 131.B.1.b.

3. Adverse Effects. The Petitioner has met its burden of presenting sufficient evidence to establish the proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a gasoline service station in an M-2 zone. The petition states that only the physical conditions typically associated with a gasoline service station are anticipated. Although there are residential properties in the vicinity, the existing businesses generate substantial automotive and large truck traffic and the proposed use would not generate traffic or other physical conditions to a greater degree than those of existing uses and vicinal properties. Because the gasoline service station is primarily intended to serve travelers along Dorsey Run Road, the additional traffic is anticipated to be modest. Any noise, odor, or light generated by the use will be attenuated by distance and will not be greater than those ordinarily associated with such a use. The use will therefore not generate excessive noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions beyond those inherently associated with a gasoline service station in an M-2 zone, in accordance with Section 131.B.2.a.

The proposed use will be located in the southeast portion of the Property and landscaped along three perimeters. The nature and landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or other applicable zones. The 92 parking spaces shown on the Conditional Use Plan exceed the 49 spaces required. The spaces and the Dumpster pads will be screened from public roads to minimize adverse impacts on adjacent properties. The petition complies with Section 131.B.2.c.

Because the ingress/egress drives will not be created until the scheduled improvements to Montevideo and Dorsey Run Road are completed, the proposed use cannot be evaluated under Section 131.B.2.d. This will necessarily be determined at the Site Development Plan stage.

II. Specific Criteria for Gasoline Service Stations (Section 131.N.25)

1. Section 131.N.25.a requires the Petitioner to demonstrate: (1) the use will not adversely affect the general welfare or logical development of the neighborhood or area in which the station is proposed, and (2) the use will not have a blighting influence as a result of a proliferation of gasoline service stations within a particular area. In this case, vicinal properties are already developed with commercial and industrial/manufacturing uses. There are no other gasoline stations along Montevideo Road between the Property and US 1, a distance of about three-quarters of a mile. About one mile north of Montevideo Road there are two gasoline service stations on US 1 and none for about a half mile south of US 1. Given the existence of compatible uses in the area, I conclude the use will not adversely affect the area's general welfare or logical development, nor have a blighting influence as a result of a proliferation of gasoline service stations within a particular area.

2. The 3.088-acre Property site exceeds the minimum lot size of 20,000 square feet, as required by Section 131.N.25.b.

3. The Site has more than 265 feet of frontage on Montevideo Road, a Major Collector, and about 819 frontage feet on Dorsey Run Road, which is also a Major Collector, in excess of the 120-foot minimum frontage required by Section 131.N.25.c.

4. The Conditional Use Plan notes that 42 percent of the site area will be landscaped. According to the TSR, the plan proposes about 28 percent, excluding the landscape islands within the parking lot, which would increase the percentage. The petition complies with Section 131.N.25.d.

5. The Property does not adjoin a residential section. Section 131.N.25.e does not apply.

6. As a condition of approval, the dumpster pads depicted on the Conditional Use Plan shall be enclosed with a fence to screen the view from the parking lots, in accordance with Section 131.N.25.f.

7. The access drives will be evaluated at the Site Development Plan phase to determine adequate sight distance, in accordance with Section 131.N.25.g.

8. Operation of the Use

a. Mr. Caplan testified that outside operations are limited to the dispensing of "multi-products" and pressurized air. Absent specific information as to which products will be dispensed, as a condition of approval outside operations will be limited to dispensing gasoline and diesel fuel and pressurized air, in accordance with Section 131.N.25.h(1).

b. Mr. Caplan stated any vending machines or sales of propane included as part of the use would be screened or closed, if required by the Hearing Authority, in accordance with Section 131.N.25.h(2).

c. The Petitioner will maintain the premises at all times in a clean and orderly condition including the care and replacement of plant materials required in the landscaping plan, as required by Section 131.N25.h(3).

d. The proposed use is not adjacent to a residential district; therefore, Section 131.N.25.h(4) does not apply.

9. Other Uses

a. The Petition proposes to locate a car wash, convenience store, and restaurant on the same lot as the gasoline service station, and has increased the minimum lot area to include a lot area equal to the area gross square footage of floor area, parking area, and loading or stacking areas required for the uses.

b. A convenience store in an M-2 zone may be no larger than 3,500 gross square feet. The store depicted on the Conditional Use Plan is 3,939 gross square feet in area. According to the record, the gasoline station will utilize the additional footage. To ensure compliance with the square footage restriction, as a condition of approval the Petitioner shall be required to specify the square footage area of the convenience store to be used by the gasoline station at the Site Development Plan stage and to reduce the building's size if the convenience store portion exceeds 3,500 square feet, in accordance with Section 131.N.25.i(2).

ORDER

Based upon the foregoing, it is this 28th day of April 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Crossroads Rock, LLC, for a gasoline service station conditional use, and including a car wash, gasoline service station/convenience store, and a restaurant on the same site, in an M-2 (Manufacturing: Heavy) Zoning District is hereby **GRANTED;**

Provided, however, that:

1. The conditional use will apply only to the uses and structures as described in the petition and Conditional Use Plan submitted, and not to any other activities, uses, structures, or additions on the Property.
2. All dumpster pads shall be enclosed with a fence.
3. Outside operations are limited to dispensing gasoline and diesel fuel and pressurized air.
4. All outside vending machines and sales of propane shall be screened.
5. The portion of the gasoline service station use within the convenience store building shall be delineated on the Site Development Plan. The convenience store portion shall be no larger than 3,500 gross square feet in area.
6. The Petitioner shall note the hours of operation for the gasoline service station and numbers of gasoline service station employees on the Site Development Plan.
7. Abandonment. The premises (including landscaping) of any gasoline service station, which is not in continuous operation or is abandoned shall be maintained in the same manner as is required under these regulations for operating gasoline service stations, in accordance with Section 131.N.25.J(1).

8. Voidance of the Use. A conditional use for a gasoline service station shall become void upon notice of abandonment by the owner. If notice of abandonment is not received, but it is determined by the Department of Planning and Zoning that a gasoline service station has not been in continuous operation for a period of twelve months, a revocation hearing shall be initiated by the Department of Planning and Zoning in accordance with the procedures set forth in Section 131.L. For purposes of this subsection, "continuous operation" shall mean operation as a gasoline service station at least eight hours per day, five days per week.

9. Removal. If the gasoline service station is abandoned and the conditional use becomes void as provided above, all gasoline pumps, pump island canopies, and other improvements (not including buildings) shall be removed from the site within six months of the date the conditional use becomes void.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

Date Mailed: 4/29/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.